

**ZONING BOARD OF APPEALS  
MINUTES OF MEETING  
DECEMBER 12, 2013**

Town of Bedford  
Bedford Town Hall  
Lower Level Conference Room

**PRESENT:** Angelo Colasante; Chair; Jeffrey Cohen, Vice Chair; Carol Amick, Clerk; Jeffrey Dearing; Todd Crowley; Michelle Puntillo

**ABSENT:** Donald Drouin

Mr. Colasante introduced himself and read the emergency evacuation notice. The other Zoning Board of Appeals (ZBA) members introduced themselves.

**PRESENTATION:** Ms. Amick read the notice of the hearing.

**PETITION #010-14 – CONTINUATION** – Jennifer Soillis, at 330 South Road, seeks a modification to Special Permit #050-93 to allow commercial kitchen for wholesale baking.

Mr. Colasante read into the record a letter from Jennifer and Steven Soillis, signed and dated December 10, 2013, requesting a continuation to the February 13, 2014 meeting date.

Mr. Colasante called for a motion to continue the hearing.

**MOTION:**

Ms. Amick moved to continue Jennifer Soillis, at 330 South Road, seeking a modification to Special Permit #050-93 to allow commercial kitchen for wholesale baking to February 13, 2014 at 7:30 PM.

Mr. Cohen seconded the motion.

Voting in favor: Colasante, Cohen, Amick, Dearing, and Crowley

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

**PRESENTATION:** Ms. Amick read the notice of the hearing.

**PETITION #015-13** – James Hudzik, at 2 Cedar Ridge Drive, seeks a Variance per Sections 14.7 and 6.2.7 of the Zoning By-Law to place accessory shed within side yard setback.

James Hudzik introduced himself and explained that there had been a 6'x8' shed on his property since 1992, and he replaced it this past summer with a new 8'x10' shed, and placed the new structure in same location as the old one. He said that the location of the old shed, and therefore the new shed, was non-conforming, set back approximately four feet from the property line instead of 10; he noted that he did not believe this was a problem since many of the other properties in the neighborhood had sheds close to, or directly on, the property line. Mr. Hudzik added that he would have a difficult time placing the shed anywhere else on the lot because rock outcroppings and trees became more prevalent farther back in the rear yard. He concluded by noting that he had received signatures from many of his neighbors showing that they had no problem with the shed being placed in its current location.

Mr. Colasante asked whether the shed had a foundation. Mr. Hudzik said it did not; it sat at grade level on gravel.

Mr. Colasante asked whether the applicant had any record or pictures of the old shed. Mr. Hudzik said he did not, although it appeared on the Town maps.

Ms. Amick said that the shed was erected illegally, and asked why the applicant did not pull a permit for it. Mr. Hudzik said he did not think it was necessary. Ms. Amick asked whether he had ever considered putting it farther back, up the incline, to meet the setback. Mr. Hudzik replied that he did not, because it fit so well between the trees in its current location.

There was extensive discussion about the shape, slope, and topography of the property.

Ms. Amick said she wondered whether the other sheds in the neighborhood had permits or had been approved by the ZBA in the past. She noted that it was understandable how this could happen, given the number of non-conformities in the neighborhood.

Mr. Colasante opened the hearing to the public.

Jason Kennedy and Diane Pascucci, of 27 Elmbrook Road, stated that they were the immediate abutters to Mr. Hudzik's property and they could attest that the sheds at 27 and 29 Elmbrook Road were there in 1965 when Ms. Pascucci bought the property. Ms. Pascucci said that her understanding was that if a shed was taken down and rebuilt, it had to conform to the most recent Zoning regulations. Mr. Colasante said that was correct. Ms. Pascucci said that she grew up in her house and moved back in 2004, and there had never been a shed at Mr. Hudzik's property until this past year. She said that there was a marking on the Town maps, but it was a tiny marking – more like a log pile or a dog house than a 6'x8' shed. She said that, on the day the new shed was placed on the lot, she went to Mr. Hudzik and asked whether it was 10 feet from the property line,

and he said it was not because he didn't think a setback mattered for a shed; when she told him she would call the Code Enforcement Department to double-check on the setback, he said "Wait a minute, I didn't pull a permit." Mr. Colasante thanked her for her input.

Harold Zaff, of 4 Cedar Ridge Road, asked whether any of the Board members knew why a 10-foot setback was necessary, and what purpose it served. Mr. Colasante replied that he wasn't entirely sure, but he assumed it was to give enough space between structures. Mr. Zaff said 10 feet seemed like an arbitrary number and he didn't feel that a setback was particularly important for a shed.

Ms. Puntillo asked the abutters to share their specific objection to the shed. Mr. Kennedy replied that he did not like the fact that one resident didn't have to follow the rules while another did; he said he did not feel that ignorance of the By-Laws was an excuse to place a structure within the setbacks.

With no further comments or questions from those in attendance, Mr. Colasante closed the public hearing.

#### **DELIBERATIONS:**

Mr. Colasante explained that this was a Variance application, and therefore there were seven pieces of the Variance "puzzle" that must be met in the affirmative:

*A particular use must be sought.* Mr. Colasante said that was clearly the case here.

*The project must affect a particular parcel or existing building.* Mr. Colasante said that was also clear here.

*The use must be for one not requiring a Special Permit.* Mr. Cohen said that it had been agreed by the Building Inspector and the Board that this was a conforming lot and needed a Variance, not a Special Permit.

*The project is without detriment to the public good.* Mr. Colasante said that he personally didn't feel that a shed such as this would be harmful to the public good, especially since there were so many non-conforming sheds in this neighborhood. Mr. Dearing agreed. Ms. Amick said that one could argue that, since the applicant knowingly ignored the By-Laws, this was a violation of the public good, since the By-Laws were written in the best interests of the public.

*There are conditions affecting the parcel or building but not the whole district.*

Mr. Colasante said that a number of parcels in this district had a similar shape and topography, and several had sheds close to the property line. Mr. Cohen agreed, noting that this was a difficult question to answer in the affirmative.

*There will be no derogation from intent and purpose of the By-Law.* Mr. Colasante said that the purpose of the By-Law was to maintain a certain setback between all structures, so he felt that this condition was not met.

*A substantial hardship, financial or otherwise, must be displayed.* Mr. Colasante said he didn't feel that this condition was met, either, since it seemed there was no hardship preventing the applicant from moving the shed. Ms. Amick agreed. Mr. Cohen said there may be some problems with the land, but not enough so that the shed couldn't be moved.

Mr. Colasante said that a Variance was very difficult to grant, in that it required a strict interpretation of the By-Law with little leeway. He said that if this lot were in any way non-conforming, a Special Permit would be required, which was much easier to grant, but unfortunately the lot was fully conforming. He said it was clear that this Variance would not pass a vote tonight, and when that happened he always gave the applicants the option of withdrawing the application. Ms. Amick pointed out that, if the Board were deny this petition, the applicant could not come back before the Board for two years with the same application, whereas if he withdrew, he would be able to come back with the same application. Mr. Cohen said that the shed would have to be moved either way.

There was further conversation about whether the applicant wanted to withdraw his application or have the Board to vote on the petition tonight. Mr. Hudzik decided that he would like to withdraw.

Mr. Colasante called for a motion to withdraw the petition.

**MOTION:**

Mr. Cohen moved to withdraw without prejudice the application of James Hudzik, at 2 Cedar Ridge Drive, for a Variance per Sections 14.7 and 6.2.7 of the Zoning By-Law to place accessory shed within side yard setback.

Ms. Amick seconded the motion.

Voting in favor: Colasante, Cohen, Amick, Dearing, and Crowley

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Colasante explained that the Board had 14 days to write its decision and there was then a 20-day appeal period, during which any aggrieved party could appeal the Board's decision.

The applicants thanked the Board members for their time.

**BUSINESS MEETING:**

**Meeting Minutes**

There was discussion about the approval of meeting minutes and the protocol the Board wanted to use moving forward with approving minutes in the future. He suggested that the ZBA assistant send out all unapproved minutes for the Board members to read through, and they would discuss the minutes at the first meeting in January.

**Adjournment**

Ms. Amick moved to adjourn the meeting.

Mr. Cohen seconded the motion.

Voting in favor: Colasante, Cohen, Amick, Dearing, and Crowley

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

The meeting adjourned at 8:35 PM.

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Angelo Colasante, Chair

Date

Respectfully Submitted,

Scott Gould  
ZBA Assistant